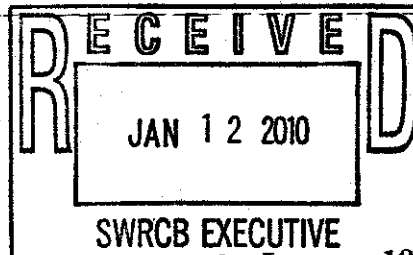


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| Post-It® Fax Note | 7671 | Date | 1-12-10 | # of pages | 2 |
| To | Charlie Hoppin | From | Ed Berry | | |
| Co./Dept. | SWRCB | Co. | | | |
| Phone # | | Phone # | | | |
| Fax # | 1-916-341-5621 | Fax # | 707-462-5142 | | |

January 12, 2010

Chairman Charles Hoppin
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100



1/19/10 Bd Mtg/Wrkshp Item 7
Russian River
Deadline: 1/13/10 by 12 noon

Re: Russian River Frost Protection Draft Regulation for the January 19th SWRCB Workshop

Dear Chairman Hoppin and Board Members,

I am writing in response to the State Water Resources Control Board (SWRCB) draft regulation relating to the effects of water diversion practices for frost protection of crops on salmonids in the Russian River watershed in Mendocino and Sonoma Counties and the related workshop scheduled for January 19, 2010.

This draft regulation does not give any consideration to the cooperative efforts put forth by local growers over the last year or to any of the comments that were brought before the SWRCB by members of the agricultural community at the November 18, 2009 Russian River frost protection workshop. In addition, this draft regulation does not in any way resemble the "hybrid" document that SWRCB staff were directed to construct following the November workshop. Although this is only a draft regulation, it is an impractical starting point from which to continue the collaborative efforts to resolve the water use needs for both the agricultural community and the fishery resources.

The use of water from the Russian River watershed for frost protection purposes is not an unreasonable use of water. *There are many consequences to prohibiting frost protection in agriculture. In Mendocino County it is the only remaining legal industry that sustains both open space and a tax base. With the demise of the railroad and the timber industry the only remaining viable, taxable industry is the growing of pears and grapes. These overall issues that effect the county are significant. These effects are greatly overshadowed by the personal failure and hardship on the family farms, who will either loose or greatly diminish their crops and source of income. If California want to abandon agriculture for other priorities, make the growing of trees and vines illegal, and stop regulating the industry out of business on an incremental basis. Please keep in mind state mandated general plans do not provide for any other productive use of agricultural land. Your decisions, have many and significant unintended consequences.* The draft regulation is also suggesting a far more overarching problem that surface water diversions by including, "the pumping of closely connected groundwater." The SWRCB has defined closely connected groundwater to be any groundwater that "is pumped from areas described as subterranean flow or mapped active stream channels and associated alluvial deposits on maps prepared by Stetson Engineers, Inc." However, the SWRCB has not proved that it has jurisdiction over subterranean streams like those mentioned in the Stetson Engineers,

Inc. maps. To force diverters to prove that their groundwater sources are, "not hydrologically connected to any surface stream within the Russian River stream system," will be virtually impossible since nearly all groundwater is hydrologically connected to some surface body of water at some point in time.

This draft regulation is an attempt by the SWRCB to secure new jurisdiction over groundwater sources that will affect a wide array of diverters including municipalities, residential supply as well as those for vineyards and other crops. Suggesting a regulation that includes groundwater goes above and beyond the initial scope of working toward a policy for frost water diversions in the Russian River and in fact expands the regulatory authority of the SWRCB into all aspects of ground water within the state of California.

Presenting a draft such as this is contradictory to what was understood by diverters to be a collaborative approach to resolving the water needs for both agriculture and the fishery. It appears that the extensive effort made by diverters over the past year, resulting in a viable solution, has been ignored and the protocol that was presented in November was not significantly considered. Refusing to include input from those who will be the most affected by such a regulation will only lead to further dispute and will significantly extend the period of time for a resolution to be reached.

Sincerely Yours;



Ed Berry Jr
707-9721109
edsred56@yahoo.com